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1 RECORD OF ORAL HEARING  
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3 \_\_\_\_\_  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES

6 \_\_\_\_\_  
7 *EX PARTE* LUNDY LEWIS  
8 \_\_\_\_\_

9 Appeal 2009-000412  
10 Application 09/577,225  
11 Technology Center 3600  
12 \_\_\_\_\_

13 Oral Hearing Held: June 10, 2009  
14 \_\_\_\_\_

15 Before LEE E. BARRETT, LANCE LEONARD BARRY, and JEAN R.  
16 HOMERE *Administrative Patent Judges*.  
17

18  
19 APPEARANCES:

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1           The above-entitled matter came on for oral hearing on Wednesday,  
2   June 10, 2009, at The U.S. Patent and Trademark Office, 600 Dulany Street,  
3   Alexandria, Virginia, before Kevin Carr, Notary Public.

4  
5           MR. ALI: We'll start with 577,225.

6           (Pause.)

7           MR. ALI: As far as 09/577,225, for the most part, the Briefs should  
8   speak for themselves, and they point out various problems with the  
9   Examiner's rejection, most notably, I think the key error in the Examiner's  
10   rejection is that he seems to equate component parameters with service  
11   parameters.

12           So, I just want to amplify that point just a little bit here, and then point  
13   out some -- the distinctions in terms of Ball a little bit more clearly.

14           So, essentially, what this system is relating to in terms of this -- Claim  
15   1 here, for example, is generally when you have a network, there might be  
16   various different services that are going to be provided for -- for a customer.

17           So, you might have one service that relates to ensuring that a certain  
18   router is available, or if you have a critical server, ensuring that that server is  
19   available, or another one might be ensuring band width utilization across the  
20   network or transaction response time.

21           So, these all these different services you might provide.

22           So, that's essentially what we're getting at here in the beginning,  
23   identifying a plurality of services, and the key here is that each of those  
24   services are supported by a plurality of network components.

1           So, essentially, if you have a band width utilization service, it's not  
2 going to depend on any particular one component, but rather how band  
3 width is utilized throughout the entire network.

4           So, that can entail any number of devices, communication links,  
5 etcetera, etcetera, and the key here is that, you know, in many instances, if a  
6 service is failing or not performing well, it's not necessarily a reflection of  
7 problems throughout the network. There might just be a single -- a singular  
8 device that's causing a problem that's then being propagated to other devices.

9           So, what we're trying to get at here in this claim is, for a given one of  
10 these services, drilling down into the -- into the plurality of components that  
11 are supporting that service to find one specific component that might be a  
12 problem.

13           So, that's where you have this feature identifying the component  
14 parameter that measures performance of one of the plurality of network  
15 components.

16           So, in other words, where you have a service that's supported by many  
17 different components, choosing one of those components and measuring  
18 component parameter coming out of that specific device and using that  
19 specific parameter specific to one device to determine service level.

20           JUDGE HOMERE: Let's turn to the reference we're quite familiar  
21 with the fact of the case here.

22           MR. ALI: Okay.

23           JUDGE HOMERE: The reference that we have before us is Ball,  
24 right?

25           MR. ALI: Uh-huh.

1 JUDGE HOMERE: And Ball describes an accounting process.

2 MR. ALI: Right.

3 JUDGE HOMERE: In Figure 1, right? An accounting process that  
4 has a variety of devices in there.

5 MR. ALI: Right.

6 JUDGE HOMERE: Okay. And this device is -- the performance of  
7 these devices are being measured. Is that correct?

8 MR. ALI: Correct.

9 JUDGE HOMERE: Okay. And that's being used in order to  
10 determine -- one specific example that's given in there is data loss, to  
11 measure data loss.

12 MR. ALI: Sure. That could be an example of service.

13 JUDGE HOMERE: Yes.

14 MR. ALI: Right.

15 JUDGE HOMERE: Excuse me?

16 MR. ALI: That could be your service, to guarantee a certain amount  
17 of data loss --

18 JUDGE HOMERE: You have a plurality of devices, right? And you  
19 measure -- across the network, and you're measuring the performance of  
20 each device.

21 Why would that be a measure of the component parameter in the  
22 network? Because the component for a parameter is defined in the  
23 specification as being a measure of how a component is performing.

24 MR. ALI: Right.

1 JUDGE HOMERE: Right. Okay. So, if you're measuring how any  
2 of these devices is performing -- if we have lots of data regarding  
3 the devices on the network -- why would that not be an indication of how  
4 each device is performing or a performance parameter, for that matter?

5 MR. ALI: It wouldn't be a performance parameter as far as like one  
6 specific device goes, but what I would emphasize in terms of Ball is that,  
7 throughout this investigation, it refers to aggregation correlation.

8 So, like you said, there's many different devices, and we could look at  
9 Figure 1. It's very evident just in this little bubble at the bottom, 12-A  
10 through 12-G, but there's a number of devices there that are all being  
11 monitored and aggregated and pooled into one.

12 Ball talks about these network accounting records that are being  
13 pulled out of each device.

14 You might have, you know, network accounting record 0 coming out  
15 of device 0, all the way through N, and those are aggregated into one kind of  
16 larger network accounting record, which is then used to determine the  
17 service level.

18 So, it's kind of like taking all this different data from all these different  
19 devices and abstracting it and determining service level from that.

20 JUDGE HOMERE: Yeah, but --

21 MR. ALI: What we're trying to do -- I'm sorry.

22 JUDGE HOMERE: But each device -- the measurement -- I'm  
23 concerned about the measurement across each device --

24 MR. ALI: Right.

25 JUDGE HOMERE: -- on the network.

1 MR. ALI: Right.

2 JUDGE HOMERE: How is that different from a component for  
3 measuring component parameter?

4 MR. ALI: It's not. It's not.

5 JUDGE HOMERE: It's not different.

6 MR. ALI: No. Exactly. It's the same.

7 JUDGE HOMERE: What's the difference, then?

8 MR. ALI: The difference --

9 JUDGE HOMERE: The fact that it aggregates them and then --

10 MR. ALI: Right.

11 So, the difference being that our claim language recites -- so, you  
12 might have the service that's supported by a plurality of components, and  
13 rather than determining service -- in Ball, you're determining service level  
14 based on the aggregation of component parameters measured from many,  
15 many different devices.

16 Our claim is referring to -- you have all these many different devices  
17 that support a service, but rather than determining service level based on this  
18 aggregation that's abstracted over all of the devices, you're drilling down into  
19 one plurality of devices.

20 JUDGE HOMERE: So, you're telling me the aggregation of the  
21 performance across the devices is different from a plurality of device or the  
22 plurality of devices, pretty much, in performing the plurality of device --

23 MR. ALI: Right. So --

24 JUDGE HOMERE: So, it's the aggregation itself that --

25 MR. ALI: Right. Yeah.

1           We could also draw an analogy to the claim language identifying a  
2   component parameter step, but I would say that, you know, Ball could fairly  
3   be characterized as having services that are supported by a plurality of  
4   network components and having service parameters, maybe, that reflect  
5   some level of service, but in terms of the way that service level is  
6   determined, they are taking component parameters that measure  
7   performance of all of the plurality of network components or at least many  
8   of the plurality of network components, whereas we're taking a component  
9   parameter that measures performance of one of the plurality of network  
10   components and then taking action to determine service level based on value  
11   of that one component parameter.

12           So, I mean there's a distinction in terms of this abstraction.

13           If you look at all these different devices in the network and just say,  
14   okay, based on all this aggregated data from perhaps hundreds of thousands  
15   of devices, or even two -- it doesn't matter -- the fact is it's coming from  
16   different sources, and you don't necessarily know which one is causing the  
17   problem.

18           You just know that there's a problem with the service and it's one of  
19   these devices that are supporting it.

20           JUDGE HOMERE: Okay.

21           To narrow down the distinction between the invention and Ball here,  
22   pretty much you're saying that -- I mean, they're pretty much doing the same  
23   thing, but the difference, really, is the fact that you're relying on the  
24   performance measurement for a plurality of devices as opposed to a single  
25   device.



1 MR. ALI: Right. Ball is relying on --

2 JUDGE HOMERE: -- a plurality --

3 MR. ALI: -- the performance of all devices, and it refers to statistical  
4 phenomena --

5 JUDGE HOMERE: Okay.

6 MR. ALI: So, what's lacking in Ball, based on that, is visibility into  
7 specific devices, right?

8 So, if you have -- if you know there's a problem with the service, you  
9 don't necessarily know which of those end devices are the ones that are  
10 causing the problem.

11 JUDGE HOMERE: Does it preclude the use of other devices, or does  
12 it say that? Does it require that only a single device be used --

13 MR. ALI: Yes, because it says identifying a component parameter  
14 that measures performance of one of the plurality of network components,  
15 and then subsequently taking an action to determine the service level from  
16 the value of the component parameter, and again, the component parameter  
17 is for one device.

18 JUDGE HOMERE: Okay.

19 MR. ALI: So, there is a difference.

20 JUDGE HOMERE: So, by measuring more than one device, then you  
21 would not meet the limitation.

22 MR. ALI: Correct. If you're measuring more than one device and  
23 determining -- if you're determining service level --

1 JUDGE HOMERE: I would think that -- I mean, if you have a  
2 plurality of devices, including the one that's called for -- so, that -- would  
3 also include the one plus more --

4 MR. ALI: Well, no, because --

5 JUDGE HOMERE: -- because the language of the claim is an  
6 open-ended claim, right?

7 MR. ALI: No. It's identifying the component parameters that  
8 measures the performance of one of -- I mean, there could be other  
9 measurements that are being taken in, but the key is that, you know, tying  
10 that one step of one of the plurality of component parameters to the -- to the  
11 final feature here of determining service level --

12 JUDGE HOMERE: Okay.

13 MR. ALI: So, you're taking an action to determine the service level  
14 from the value of the component parameter, and again, that component  
15 parameter only relates to one device.

16 So, even though you might be collecting data from many, many  
17 different devices -- again, because a plurality of components support the  
18 device -- support the service -- you might, later on, want to go back and say,  
19 you know, are we looking at the right device?

20 So, you still might collect all the data, but the key is that, when you're  
21 determining service level, you're only looking at one device.

22 JUDGE HOMERE: Nonetheless, you're able to -- if you want to,  
23 you're able to ascertain what the performance is of the particular device,  
24 right?

25 MR. ALI: I'm sorry?

1 JUDGE HOMERE: Nonetheless, if you want to -- if the administrator  
2 in Ball's system wants to, that person can ascertain what the performance is  
3 across a particular device, because that data is there. That data is being sent  
4 to the accounting process, right?

5 MR. ALI: Perhaps, but that's -- that's not the way that Ball describes  
6 taking -- determining service level. Maybe he chooses to look at one  
7 particular device in terms of some kind of auditing process or something like  
8 that, but that's not what Ball -- how Ball --

9 JUDGE HOMERE: -- the accounting process itself receives  
10 performance data from each device --

11 MR. ALI: Right.

12 JUDGE HOMERE: -- and then aggregates them to determine the  
13 service level.

14 MR. ALI: Right. But again, it's the aggregated data that's being used  
15 to determine service level.

16 JUDGE HOMERE: Okay.

17 MR. ALI: So, the fact is that, you know, even though it's receiving  
18 individual sources of information, network accounting records from all these  
19 different devices, when it determines service level, it doesn't use those  
20 individual records. It takes an aggregated form of that --

21 JUDGE HOMERE: You're pretty much saying that you would not  
22 have a one-to-one correlation between the service level and the network  
23 component performance, pretty much.

24 MR. ALI: Right.

25 JUDGE HOMERE: Okay.

1 MR. ALI: But I'd also emphasize that there is a one-to-many  
2 relationship between the service and the network components, all right? For  
3 one service, there's many -- or a plurality of network components, but in  
4 terms of determining service level, you're only looking at one of those  
5 components, right?

6 JUDGE HOMERE: Okay.

7 MR. ALI: So, I mean, I would like to acknowledge, also, that there is  
8 a portion in Ball that talks about a one-to-one relationship in terms of  
9 service.

10 That's in column 33, starting at around line 22 on down, and you  
11 know, just to kind of make this clear, you know, the first 32 columns of Ball  
12 are all talking about aggregating and correlation and using data that's  
13 abstracted over many devices, but in this specific column, they're talking  
14 about a service that's dependent on one router.

15 So, in that case, you would be looking at the performance coming out  
16 of that one router, but again, it's distinct from the claim language, because  
17 we're referring to situations where you have a service that's supported by a  
18 plurality, right?

19 So, I think, just to be clear, this column here, where it talks about, you  
20 know, looking at one specific device --

21 JUDGE HOMERE: What line again? Column 33, line --

22 MR. ALI: Line 22 on. But specifically in lines like 37 through 44, it  
23 says that -- you're looking at a particular route, so the policy will be defined  
24 in a one-to-one relationship.

25 JUDGE HOMERE: Okay.

1 MR. ALI: Right.

2 So, I mean the difference there is, again, even though you're looking  
3 at one specific device in that case, it's not a situation where you have a  
4 plurality of components supporting the service.

5 So, again, there isn't that drill-down feature. You're still looking at  
6 every single device --

7 JUDGE HOMERE: Okay.

8 Do you have anything else on this one?

9 MR. ALI: No, that's all for that one.

10

11 (Whereupon, the proceedings were concluded on Wednesday, June 10,  
12 2009.)

13